

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of J.M., a person under)	(Not For Official Publication)
eighteen years of age.)	
_____)	Case No. 20050603-CA
)	
R.W.M.,)	F I L E D
)	(April 20, 2006)
Appellant,)	
)	2006 UT App 158
v.)	
)	
V.C.,)	
)	
Appellee.)	

Fifth District Juvenile, St. George Department, 434169
The Honorable Thomas M. Higbee

Attorneys: D. Bruce Oliver, Salt Lake City, for Appellant
Michael R. Shaw, St. George, for Appellee
Martha Pierce and Mandy Rose, Salt Lake City,
Guardians Ad Litem

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

R.M. (Father) appeals the termination of his parental rights
in J.M. We affirm.

Father claims that the court impermissibly relied upon
hearsay statements in determining that Father's parental rights
in J.M. should be terminated.¹ Specifically, the juvenile court

¹We note that while rule 55 relaxes the normal rules
applicable to briefs in order to expedite the appellate process,
the rule requires an appellant to provide sufficient information
and analysis to allow this court to fully understand the issues
appealed. Utah R. App. P. 55. An appellant meets this
requirement by, among other things, providing specific issues for
(continued...)

admitted into evidence several statements made by J.M.'s mother (the deceased) to her mother, her father, and a police officer concerning alleged incidents of abuse. The first set of statements relate to the deceased's statement to each of her parents during a hospitalization that required staples to close a wound in the back of her head. While in the hospital she told her parents that the wound was the result of Father throwing a plate at her. In regard to these statements, even if the statements were inadmissible hearsay, their admission was harmless because the evidence was cumulative. Specifically, the deceased's parents testified that Father admitted to throwing an object at the deceased that struck her in the head. While Father denied this event ever took place and denied making this statement to the deceased's parents, the juvenile court found that the deceased's parents were credible while Father's testimony was not credible. See In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680 (stating that juvenile court is given wide latitude of discretion based in part on its opportunity to judge the credibility of witnesses); see also State v. Workman, 852 P.2d 981, 984 (Utah 1993) (stating that "[o]rdinarily, a reviewing court may not reassess the credibility or re-weigh the evidence"). Thus, because the statements complained of were merely cumulative any error in admitting the statements would have been harmless. See In re J.C., 808 P.2d 1131, 1136 (Utah Ct. App. 1991) (concluding that harmless error doctrine applied to appellant's claim that the juvenile court improperly admitted hearsay evidence when other non-hearsay evidence supported the juvenile court's findings and conclusions).

The second set of statements relate to the decedent's statements to her parents the night before she died concerning another domestic abuse incident with Father. The juvenile court determined that the statements were admissible under the excited utterance exception to the hearsay rule. See Utah R. Evid. 803(2). In so concluding, the juvenile court found that a startling event had occurred (an incident of domestic violence), that the decedent was still under the stress caused by the event, and that the statements related to the event. See State v. Mickelson, 848 P.2d 677, 683 (Utah Ct. App. 1992) (discussing three-prong analysis for admissibility of a statement as an excited utterance). Accordingly, the juvenile court correctly

¹(...continued)
review and a brief explanation of the authority that the appellant believes demonstrates that the juvenile court erred. General issue statements and citations to case law without an explanation as to why that case law requires reversal does not meet this burden.

applied the law dealing with excited utterances. Further, based upon our review of the record, we cannot say the juvenile court's findings relating to the excited utterance were clear error, nor can we conclude that the juvenile court abused its discretion in admitting the testimony. See State v. Workman, 2005 UT 66, ¶10, 122 P.3d 639 (stating that review of admissibility of hearsay evidence requires review of legal determinations under correctness standard, review of factual findings under clear error standard, and review of ruling of admissibility under abuse of discretion standard). Thus, such statements were properly admitted.

The final set of statements deals with statements the deceased made to a police officer shortly after the statements she made to her mother and father on the night before her death. Without determining whether such statements were inadmissible hearsay, we conclude that even if the statements should have been excluded, their admission into evidence was harmless error. Specifically, such testimony was merely cumulative of the testimony of the decedent's mother and father who testified to the same information. Accordingly, Father can demonstrate no harm in the admission of the testimony. See In re J.C., 808 P.2d at 1136.²

Father next argues that the evidence was insufficient to support the termination of his parental rights.³ We "review the juvenile court's factual findings based upon the clearly erroneous standard." In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680. "The juvenile court in particular is given 'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' 'special training, experience and interest in this field, and . . . devot[ed] . . . attention to such matters" Id. (citations omitted). So, in

²Our review of the record revealed other hearsay objections to the admission of evidence. However, our review of those statements indicates that the statements were properly admitted or, alternatively, that Father suffered no harm from the admission of the statements.

³More particularly, Father's second issue on appeal states: "Whether the Court's conclusions were clearly erroneous in light of the clear and convincing evidence requirement." We assume that Father is claiming that, based upon the clear and convincing standard, there was insufficient evidence to support the juvenile court's conclusions of law that led to the termination of his parental rights. This is a sufficiency of the evidence claim.

reviewing an order terminating parental rights, this court "will not disturb the juvenile court's findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶6, 991 P.2d 1118.

The juvenile court terminated Father's parental rights after determining that: (1) J.M. was abused and neglected; (2) Father was an unfit parent; (3) J.M. was in an out of home placement under the supervision of the court and Father had been unable or unwilling to remedy the circumstances that led to the removal; and (4) Father has made only token efforts to eliminate the risk of unfitness and abuse. Under Utah Code section 78-3a-407(1), the finding of any single ground is sufficient to warrant termination of parental rights. See Utah Code Ann. § 78-3a-407(1) (Supp. 2005) (providing that the court may terminate all parental rights if it finds any one of the grounds listed); see also In re F.C. III, 2003 UT App 397, ¶6, 81 P.3d 790 (noting that any single ground is sufficient to terminate parental rights). Thus, if any one of the grounds found by the juvenile court to terminate Father's parental rights is supported by the record, such ground is sufficient to warrant termination of Father's parental rights.

The juvenile court did not abuse its discretion in finding Father to be an unfit parent. At trial, evidence was adduced that Father had abused the deceased on at least four separate occasions. In one of these incidents, witnesses described Father as "body slamming" the deceased onto a concrete sidewalk. In another incident, a witness observed Father dragging the deceased back into the home against her will. Another incident involved Father throwing an object at the deceased that led to hospital care. And the final incident resulted in the filing of a police report on the night before the deceased's death. Additionally, the deceased frequently had bruises following arguments with Father and Father acknowledged to at least one person that he had physically harmed the deceased and needed to treat her better. Such acts demonstrate a history of violent behavior. Further, at the time of trial Father was incarcerated and was not due to be released from federal prison for forty-six months, thereby making him unavailable to be a parent for nearly four years.⁴ Because

⁴While a parent whose child is not in DCFS custody may not have his parental rights terminated solely due to incarceration, a lengthy stay in prison that makes it so neither parent is able to perform his parental duties may be a factor in determining whether the incarcerated parent is unfit. See In re D.B., 2002 (continued...)

J.M.'s mother is no longer around to care for him, J.M. will be deprived of a normal home for a lengthy period of time due to Father's incarceration. See In re D.B., 2002 UT App. 314, ¶12, 57 P.3d 1102 (stating "even absent the statutory mandate of subsection (e), incarceration of a parent that deprives the child of a normal home for a 'lengthy' period of time may alone support a finding of unfitness"). The juvenile court also found that Father's lengthy incarceration would make it unlikely that Father would be able to remedy the circumstances that made him unfit, including his violent behavior. These facts, coupled with Father's criminal history, drug history, and his poor parenting habits, such as continuing to refer to J.M. as a "little bastard," demonstrate that the juvenile court did not err in finding that Father was an unfit parent. Accordingly, the juvenile court did not abuse its discretion in terminating the parental rights of Father.⁵

Affirmed.

James Z. Davis, Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

⁴(...continued)
UT App 314, ¶¶11-12, 57 P.3d 1102 (concluding principle announced in prior case predating subsection 78-3a-408(2)(e), that incarceration leading to inability of either parent to perform the duties of a parent and unable to give stability to children, could lead to finding of unfitness).

⁵Father has not alleged that the juvenile court abused its discretion in determining that it was in the best interest of J.M. for Father's parental rights to be terminated. While such a finding is necessary to terminate Father's parental rights, he makes no mention of best interests in his petition. Accordingly, we do not address the issue.